

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: May 05, 2017

(i) + **W.P.(C) 3917/2017 & C.M. 17269-70/2017**

MANISH KUMAR Petitioner

Through: Mr. Rajiv Aggarwal & Mr. Sachin
Kumar, Advocates

Versus

EAST DELHI MUNICIPAL CORPORATION Respondent

Through: Kumar Rajesh Singh, Advocate

(ii) + **W.P.(C) 3920/2017 & C.M. 17279-80/2017**

SACHIN Petitioner

Through: Mr. Rajiv Aggarwal & Mr. Sachin
Kumar, Advocates

Versus

NORTH DELHI MUNICIPAL CORPORATION Respondent

Through: Kumar Rajesh Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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ORAL

1. In the above captioned two petitions, challenge is to the impugned order of 27th February, 2017, vide which petitioners' application for interim order has been dismissed by Industrial Tribunal, Karkardooma Court, Delhi (*hereinafter referred to as the "Tribunal"*) while holding that grant of any interim order would amount to prejudging the case in

favour of petitioner, without adjudication of the main dispute.

2. Since challenge to the impugned order in these two petitions is on identical grounds, therefore, these two petitions have been heard together and are being decided by this common order.

3. To assail the impugned order, learned counsel for petitioners relies upon a decision of a Coordinate Bench of this Court in *All India General Mazdoor Trade Union (Regd.) Vs. T.C.I.L. & Ors.* 81 (1999) DLT 225 to submit that Tribunal has the power to pass interim Award. Reliance is also placed upon a order of Single Bench of this Court in W.P.(C) 12602/2006, *Hongkong and Shanghai Banking Corporation Ltd. Vs. Govt. of India*, of 24th September, 2008 whereby interim Award of ₹30,000/- has been passed. Counsel for petitioners submits that the aforesaid order has been upheld by a Division Bench of this Court in LPA 684/2008, *Hongkong and Shanghai Banking Corporation Ltd. Vs. Govt. of India*, on 11th November, 2008 and by Supreme Court in *Hongkong and Shanghai Banking Corporation Limited Vs. Government of India & Anr.* (2009) 13 SCC 771. Petitioners' counsel further submits that claim for regularization was made by petitioners way back in the year 2014 and for the post of Assistant Malaria Inspectors, there are about 400 vacancies, which have been advertized vide Notification of 24th January, 2017 (*Annexure P-6*) and on interview basis, regular appointments are being made, much to the detriment of petitioners, who have already rendered seven years of service and they have a good case for regularization of their service and if these vacancies are filled up, then their case pending before Tribunal would be rendered infructuous. So, it is submitted on behalf of petitioners that impugned order be set aside and

a direction be issued to Tribunal to decide the pending petition within a month or so and till then, *status quo* regarding employment of petitioners be maintained and a direction be issued to respondents to keep two posts vacant for petitioners.

4. On the other hand, counsel for respondents submits that petitioners are contractual employees and are not entitled to regularization of their service and that interviews for the post of Assistant Malaria Inspectors have been already held and the result is going to be declared soon and any interim order restraining filling up of posts/ vacancies would be to the detriment of prospective candidates and so, these petitions deserve to be dismissed. Nothing else is urged on behalf of either side.

5. Upon hearing and on perusal of impugned order and the material on record, I find that there is no doubt that an interim Award can be made. In *Hongkong and Shanghai Banking Corporation Limited (supra)*, interim Award of ₹30,000/- was made in view of the fact that employee therein had rendered twenty years of service. Though petitioners have purportedly rendered seven years of service but the claim for their regularization is still sub-judice and outcome of pending case before the Tribunal cannot be prejudged. Learned Tribunal has rightly rejected petitioner's application for interim relief, as regular appointments to the post of Assistant Malaria Inspectors cannot be forestalled by keeping the posts vacant, as interviews for these posts has been already held and result are likely to be declared soon. This Court is not inclined to give any interim Award in a case of regularization of service. Otherwise also, interim directions in a case like instant one are not warranted, for the reason that in the event of petitioners succeeding before the Tribunal,

they can be adequately compensated by fresh absorption on the posts which fall vacant in future or they can be compensated. However, let the Tribunal make all the endeavours to decide the pending case for regularization within a month or so.

6. In view of the aforesaid, finding no substance in these petitions and applications, they are dismissed while leaving the parties to bear their own costs.

MAY 05, 2017

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(SUNIL GAUR)
JUDGE